

**In the Name of Allah, the most merciful and the most  
compassionate**

# **Juvenile Code**

## **Preamble**

### **Article 1**

1. This Code, in compliance with the International Conventions protecting human rights and in particular the interests of children, dictates provisions indicating measures and procedures applicable to those in conflict with the law, at risk, and in need of care and protection.

### **Article 2**

1. Objectives of this Code are:
  - 1) Prevention and social readjustment of children in conflict with law.
  - 2) Re-educating children whose behaviour cannot be corrected through parental care or ordinary educational measures.
  - 3) Encouraging and supervising public welfare institutions and social services to provide care and protection for children in need.

### **Article 3**

1. In each capital Province a Juvenile Primary Court is established.
2. The Primary Juvenile Court, having jurisdiction on the territory of the Province, is competent to handle all the cases of children in conflict with the law, at risk, and in need of care and protection.
3. Appeals and complaints against the decisions of the Primary Court are considered by the Provincial Court located in the same venue.

### **Article 4**

1. The juvenile Primary Court is composed of three judges: one of them being the President of the Court.
2. In addition to the qualifications required by the Law of Jurisdiction and Organization of Courts of Afghanistan, the judges of the juvenile Court shall have specific aptitude and experience in dealing with the children problems.
3. The juvenile Court is assisted by administrative staff.

### **Article 5**

1. In each capital Province the office of the juvenile prosecutor, having competence to perform the activities laid down in this Code, is established.
2. The office is composed by prosecutors having the same qualifications indicated in article 4.
3. The office is headed by a Chief prosecutor and assisted by administrative staff.

## **Article 6**

1. The juvenile prosecutor and the juvenile Court can hear the advice of a competent social service before making their decisions concerning the children.

## **Article 7**

1. The listed expressions used in this Code have to be interpreted as follows:
  - 1) Children are juveniles under 18 years of age
  - 2) Non-discerning children are juveniles under 7 years of age
  - 3) Discerning children are juveniles in between 7 years and 12 years of age
  - 4) Adolescent are juveniles in between 12 an 18 years of age.
  - 5) Continued, long, medium, and short imprisonments are the penal sanctions applicable to children convicted of criminal offences. They consist of deprivation of liberty to be executed in penitentiary institutions for juveniles.
  - 6) Detention is the confinement of children suspected or accused of having committed a crime in a penitentiary institution or rehabilitation center during the phases of investigations and trials.
  - 7) Probation is a measure the juvenile Court can apply to accused children or to convicted children. In the first case it consists of the decision of the juvenile Court to discontinue the trial at the condition that children maintain good behaviour, while in the second case it consists of the decision of the juvenile Court to suspend the execution of the sanction at the condition that children maintain good behaviour.
  - 8) Warning is a reproach made by the juvenile Court or the juvenile prosecutor to children at risk advising them to abstain from future irregular behaviour.
  - 9) Legal representatives are parents, guardians and relatives responsible for the custody and education of children.

## **Chapter 1**

### **Children in Conflict with the Law**

#### **Article 8**

1. Children in conflict with the law are those who have infringed the penal law.

#### **Article 9**

1. The ordinary criminal procedure and substantive criminal laws in force in Afghanistan are applicable to children in conflict with the law if not differently provided for by the present Code.

#### **Article 10**

1. Children who have not completed the age of 12 are not criminally responsible.
2. To those who are in between 7 and 12 years of age and have committed a crime the measure indicated in paragraph 2 of article 45 can be applied in place of penal punishment.
3. Legal representatives of children are liable according to the civil law for the harms produced by children if they have not exercised their duties of education and control.

#### **Article 11**

1. In case a crime has been committed by an adult accomplice together with children, the latter shall be dealt with by the present Code, separated by the adult.

#### **Article 12**

1. In applying penal and procedural provisions to children, reference shall be made to the age they had at the moment in which the crime was committed.

#### **Article 13**

1. The age of the children is determined according to their citizenship ID Card.
2. In case children have no ID Card or their physical appearance seems to demonstrate an age different from that indicated in the ID Card, the opinion of a physician should be requested.
3. Whether the physician is unable to assess their real age the case shall be referred to a medical team of not less than three persons.
4. Whether the age of children cannot be determined according to paragraphs 1, 2, and 3 of this article and there is the doubt of their belonging to one of two

classes of age in question, it shall be assumed that children belong to the class more favourable to them.

#### **Article 14**

1. The suspect or accused children shall be summoned for investigation or trial through their legal representatives.
2. In case the summoned legal representatives fail to appear with the children, without justification, they shall be fined 500 Afghani.
3. Whenever children are detained or confined in a penitentiary institution or in a rehabilitation center, notification on them shall be made through the director of the institution who shall take care of making children appear before the judicial authorities when requested.

## **Chapter 2**

### **Detection and Investigation of Children's Crimes**

#### **Article 15**

1. Within the police organization special units shall be instituted including male and female personnel particularly specialized to deal with children issues.

#### **Article 16**

1. Police and judicial authorities in arresting children, in addition to the conditions laid down in the Criminal Procedure Code, shall consider their personality's characteristics and their social conditions in order to reduce at the minimum possible cases of deprivation of liberty awaiting the trial.

#### **Article 17**

1. Detained children can be released on bail without monetary deposit, whenever the continuation of detention does not appear to be indispensable.

#### **Article 18**

1. During the detention maximum opportunities shall be given to relatives of children and to social services to pay visit to them.

#### **Article 19**

1. Police are duty bound to notify within 24 hours to the legal representatives of children and to social service the arrest of them.
2. Should this not be possible police shall submit an explanatory report to the competent juvenile prosecutor.

#### **Article 20**

1. In preparing the report for informing the juvenile prosecutor on the arrest of children, police shall include also preliminary information on their personality and the social environment of their life.

#### **Article 21**

1. Whether in the course of the investigations the juvenile prosecutor realizes that the suspect, at the moment of the commission of the crime, was more than 18 years of age, shall immediately transfer the case to the competent prosecutor.

## **Article 22**

1. The arrest of children and the outputs of the investigations shall be kept confidential in order to not prejudice their reputation and interests.

## **Article 23**

1. Whether the juvenile prosecutor deems that the alleged offence committed by children is of bagatelle relevance can dismiss the case giving a warning to the same.
2. The juvenile prosecutor can also dismiss the case, giving a warning to children, when the alleged offence consists of obscenity or misdemeanours punished by medium term imprisonment, if a reconciliation initiative was concluded by the settlement with the victim.

## **Article 24**

1. If, during the investigations, the juvenile prosecutor reaches the opinion that suspect children suffer a mental illness shall refer provisionally children to a mental institution giving immediate notice to the juvenile Court.
2. The juvenile Court, following the recommendations of a medical expert, shall decide if the confinement has to be continued or the related measures indicated in paragraph 2 of article 45 are to be applied.

## **Article 25**

1. In making the decision indicated in the previous article or in preparing the indictment the juvenile prosecutor shall make reference to the following circumstances:
  - a) age
  - b) psychological maturation
  - c) character and aptitude
  - d) education
  - e) environment and circumstances of their life
  - f) reasons and causes for the commission of the offence
  - g) previous criminal record
  - h) circumstances of their behaviour at the moment of the offence and after that
  - i) harms caused to the victim
2. In the same deed the juvenile prosecutor can make recommendations for the adoption, instead of penal sanctions, of one of the measures indicated in paragraph 2 of article 45.

**Article 26**

1. The juvenile Court, in finding children responsible for the alleged crime, having regard to the circumstances under article 25, can apply, even without request of the juvenile prosecutor, instead of a penal sanction, one of the measures listed in paragraph 2 of article 45.

**Article 27**

1. During the investigations and the trials for assessing crimes committed by children below 12 years of age, the same cannot be detained.
2. Should their behaviour require supervision and control, children shall be consigned to their legal representatives or to a penitentiary institution or other rehabilitation center for taking care of them in waiting the final decision of the juvenile Court.

## **Chapter 3**

### **The Procedure of Children's Trial**

#### **Article 28**

1. The juvenile prosecutor shall report to the Attorney General cases pending at the prosecution stage for more than 3 months, every 3 months giving justification for the delay.

#### **Article 29**

1. The President of the juvenile Primary Court shall report to the Supreme Court cases pending at the trial stage for more than 3 months, every 3 months giving justification for the delay.

#### **Article 30**

1. The hearings of the trial will be conducted with closed doors but the decision shall be read publicly.
2. The hearings, or part of them, shall be conducted without the presence of children whenever the issues under discussion could have negative influence on their psychology.

#### **Article 31**

1. The penal sanctions applicable to children in between 12 and 18 years of age are the following:
  - a) Continued, long, medium and short imprisonment not exceeding one third of the maximum term applicable to adults.
  - b) Death penalty cannot be applied. Instead of it, continued imprisonment shall be applied not exceeding one half of the maximum of the continued imprisonment applicable to adults.

#### **Article 32**

1. If the duration of the imprisonment term is less than 3 years the juvenile Court can establish that the related execution takes place in a rehabilitation center.
2. When, during the execution, children reach the age of 18 years they shall be transferred to a penitentiary institution for adults for the execution of the remaining period of their term.

### **Article 33**

1. When the juvenile Court deems that children should be sentenced to less than 3 years of imprisonment, it can discontinue the trial, deciding that children be put under probation for 1 year.
2. In case, at the end of this period, it results that children have shown to be socially readjusted the juvenile Court shall decide their discharge.
3. On the contrary, if children maintain unlawful behaviour the juvenile Court shall resume the trial and make the related decision on the case.

### **Article 34**

1. When children have been sentenced to an imprisonment term not exceeding 3 years the juvenile Court can suspend the execution putting them under probation for 1 year.
2. In case, at the end of this period, it results that children have shown to be socially readjusted, the juvenile Court shall declare the extinction of the sentence.
3. On the contrary if children maintain unlawful behaviour the juvenile Court orders the execution of the sentence. In this case the initial term for the appeal of the decision starts from the day in which the decision has been notified.

### **Article 35**

1. In order to make the decision indicated in articles 33 and 34 the juvenile Court shall consider the reports on the behaviour of children provided by the officers or the persons responsible to supervise the applied probation.

### **Article 36**

1. Children have the right to file appeal or recourse to Supreme Court on their own, in addition to the related right of the defense counsel.

## **Chapter 4**

### **Special Provisions for the Execution of Penal Sanctions applied to Children and their Recording**

#### **Article 37**

1. For the execution of probation special units, within the organization of the police, shall be established composed of specialized officers to supervise children's behaviour.
2. The Ministry of Justice can designate reliable specialized organizations to accomplish the tasks related to the execution of probation.
3. In deciding the related measures the juvenile Court shall indicate to which of the above mentioned units or organizations the tasks of probation officers are entrusted.

#### **Article 38**

1. The probation officers shall present periodically reports on the behaviour of children to the juvenile Primary Court which made the original decision.
2. The competence to declare the extinction of the sentence or to order its execution belongs to this Court.

#### **Article 39**

1. A court records office for the decisions applied to the sentenced children is established at the juvenile Primary Courts collecting the related annotations for the children born in the territory of their jurisdiction.
2. The annotations concerning children born outside Afghanistan are recorded in the file of the juvenile Primary Court in the Capital City.
3. Certifications concerning the records of children can be released only to their legal representatives, to the judicial authorities and public offices.

#### **Article 40**

1. A person who was sentenced to a penal sanction for crime committed when he had not reached the age of 18 years can obtain, at his request, from the juvenile Primary Court which made the decision, the cancellation of the related penal record in case, before reaching the age of 25 years, he has not committed any other crime.

## **Chapter 5**

### **Children at risk**

#### **Article 41**

1. Children at risk are those whose irregular behaviour cannot be corrected through parental care or ordinary educational measures.
2. The rehabilitation and education measures indicated in paragraph 2 of article 45 are applicable.

#### **Article 42**

1. When children manifest irregular behaviour described in article 41 their legal representatives may submit the case to the juvenile prosecutor having territorial jurisdiction on the place where children reside, requesting the adoption of the measures indicated in paragraph 2 of article 45.

#### **Article 43**

1. The juvenile prosecutor, having received the request indicated in the previous article or when himself is directly cognizant that children have irregular behaviour, conducts a swift investigation collecting information by the relatives and other person being informed of the case in order to assess the behaviour of children and all the family and social circumstances surrounding them.
2. In conducting this investigation the juvenile prosecutor can make recourse to the collaboration of qualified social services.
3. Whenever the juvenile prosecutor deems that the adoption of one of the measures indicated in paragraph 2 of article 45 is appropriate reports the case to the juvenile Court.

#### **Article 44**

1. The President of the juvenile Court establishes a hearing for examining the case, inviting the person indicated in article 42 to appear.
2. The legal representatives shall bring the child to the hearing and, in case of his refusal, can request the assistance of the police.
3. If the juvenile Court deems that the collected information is not sufficient to adjudicate the case can order additional investigations.
4. The hearing is conducted in chamber (closed doors).
5. The juvenile prosecutor and the legal representatives shall present their views on the case.
6. Children shall be heard.

#### **Article 45**

1. Whether the juvenile Court concludes that no measures are necessary, declares the case closed.
2. Otherwise it adopts one of the following measures:
  - 1) Warning
  - 2) Supervision of social services
  - 3) Confinement to a rehabilitation center.

#### **Article 46**

1. The supervision of social services consists of the decision of the juvenile Court to give a specialized social service the responsibility to supervise the behaviour of children.
2. For the performance of this function the tasked social service shall designate one of his social worker or person having similar experience and competence to come in contact with the child and assisting and guiding him so that he can abandon his irregular habits and become socially adjusted.
3. This officer or person shall play the role of a probation officer. The probation officer shall report periodically to the juvenile Court about the ongoing of the case.
4. The probation officer's supervision is discontinued by order of the juvenile Court when it appears that the aim of social readjustment has been achieved or, in any case, at the completion of 18 years of age.
5. The juvenile Court can decide to transform this measure in that of confinement to a rehabilitation center. The decision is adopted in chamber.

#### **Article 47**

1. The confinement to a rehabilitation center consists of the decision of the juvenile Court to commit children to a rehabilitation center giving prescription to the head of the center for the execution of the measure.
2. During his staying in the center children shall be offered educational and vocational training opportunities. The program has to be conducted by the personnel of the center in continuous consultation with the children's family members.
3. The head of the center shall report periodically to the juvenile Court about the behaviour of the child, problems encountered and remedies adopted.
4. The head of the center requests the discontinuation of the measure when he thinks that children have reached their social re-adjustment.
5. The juvenile Court re-examining the case can decide to transform this measure in that described in article 48. The decision of the Court is adopted in chamber.

## **Chapter 6**

### **Children in Need of Care and Protection**

#### **Article 48**

1. Children in need of care and protection are those that, because abandoned, or anyhow without family or belonging to a family absolutely incapable to take care of their basic needs deserve intervention by public welfare authorities and voluntarily organizations interested in care and protection of children.

#### **Article 49**

1. Public welfare authorities and organizations indicated in the previous article adopt appropriate measures whenever they know that children are in the condition indicated in the said article.

#### **Article 50**

1. When the police or citizens come to know of cases of children in the condition indicated in article 50, who are not under the care of anybody, shall report the case to the juvenile prosecutor having jurisdiction on the territory where the children live.
2. If the juvenile prosecutor after a swift assessment, using the collaboration, when needed, of social services, realises that children are in need of care and protection refers the case to the juvenile Court which requests public welfare authorities or organization interested in care and protection of children to adopt appropriate measures.

#### **Article 51**

1. In case of measures adopted directly by public welfare institutions or voluntarily organizations, as indicated in article 51, or in case of the measures requested by the juvenile Court, according to article 52, the juvenile prosecutor periodically, using the collaboration of social services, controls if the rights and interests of children are properly respected.
2. Whenever he realizes that there are violations of the said rights and interests, immediately reports to the juvenile Court which orders appropriate remedies for redressing the situation.

#### **Article 52**

1. The social services indicated in this Code are those established by specific laws.
2. Until when, in the Country, such services will not be sufficient, the related functions are performed also by voluntarily organizations included in a list

prepared by the President of the juvenile Court after having assessed their real capability to perform the related tasks.

3. In preparing the list the President of the juvenile Court shall consult the Juvenile Justice Administration Department of the Ministry of Justice.